

the officer with a statement of the reasons given by the deponent for making them.

(3) The deposition must then be signed by the deponent, unless the interested parties by stipulation waive the signing, or the witness is ill or cannot be found or refuses to sign.

(4) If the deposition is not signed by the deponent, the officer must sign it and state on the record the fact of the waiver, the illness or absence of the deponent, or the refusal to sign together with the reason, if any, given therefore. The deposition may then be used as fully as though signed, unless the administrative law judge or Indian probate judge holds that the reason given for refusal to sign requires rejection of the deposition in whole or in part.

(g) *Certificates by officer.* The officer must certify on the deposition that the deponent was duly sworn by the officer and that the deposition is a true record of the deponent's testimony. The officer must then securely seal the deposition, together with two copies thereof, in an envelope and must personally deliver or mail the same by certified or registered mail to the administrative law judge or Indian probate judge.

(h) *Use of depositions.* (1) A deposition ordered and taken in accordance with the provisions of this section may be used in a hearing if the administrative law judge or Indian probate judge finds that:

- (i) The witness is absent;
- (ii) The witness's presence cannot be readily obtained;
- (iii) The evidence is otherwise admissible; and
- (iv) Circumstances make it desirable in the interest of fairness to allow the deposition to be used.

(2) If the interested party on whose application a deposition was taken refuses to offer the deposition, or any part thereof, in evidence, any other interested party or the administrative law judge or Indian probate judge may introduce the deposition or any portion thereof on which he or she wishes to rely.

**§ 4.222 Written interrogatories; admission of facts and documents.**

(a) An interested party may serve upon any other interested party writ-

ten interrogatories and requests for admission of facts and documents. The interested party may do this only if:

(1) The interrogatories and requests are served in sufficient time to permit answers to be filed before the hearing;

(2) A copy of the interrogatories and requests is filed with the administrative law judge or Indian probate judge; and

(3) The interrogatories and requests are drawn with the purpose of defining the issues in dispute between the parties and facilitating the presentation of evidence at the hearing.

(b) A party receiving interrogatories or requests served under paragraph (a) of this section must:

(1) Serve answers upon the requesting party within 30 days from the date of service of the interrogatories or requests, or within another deadline agreed upon by the parties or prescribed by the administrative law judge or Indian probate judge; and

(2) File a copy of the answers with the administrative law judge or Indian probate judge.

(c) Within 10 days after written interrogatories are served upon a party, that party may serve cross-interrogatories for answer by the witness to be interrogated.

**§ 4.223 Objections to and limitations on production of documents, depositions, and interrogatories.**

The administrative law judge or Indian probate judge may limit the time, place, and scope of discovery under §§ 4.220, 4.221, and 4.222. The administrative law judge or Indian probate judge may do this:

(a) Upon timely motion by any interested party, if that party also gives proper notice and shows good cause; or

(b) Upon his or her own motion if a party's dilatory tactics or unreasonable demands will delay the orderly progress of the proceeding or cause unacceptable hardship to a party or witness.

**§ 4.224 Failure to comply with discovery.**

(a) If a party fails to comply with discovery under §§ 4.220 through 4.223, without showing a satisfactory excuse

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or explanation, the administrative law judge or Indian probate judge may:

(1) Decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with the claims of the other interested party or in accordance with other evidence available to the administrative law judge or Indian probate judge; or

(2) Make such other ruling as the administrative law judge or Indian probate judge determines just and proper.

(b) For purposes of paragraph (a) of this section, failure to comply with discovery includes failure to:

(1) Comply with a request for the production of a document under § 4.220;

(2) Appear for examination under § 4.221;

(3) Respond to interrogatories or requests for admissions under § 4.222; or

(4) Comply with an order of the administrative law judge or Indian probate judge issued under § 4.223.

#### § 4.225 Prehearing conference.

Before a formal hearing, the administrative law judge or Indian probate judge may, upon his or her own motion or upon the request of any interested party, call upon the parties to appear for a conference to:

(a) Simplify or clarify the issues;

(b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(c) Limit the number of expert or other witnesses to avoid excessively cumulative evidence;

(d) Effect possible agreement disposing of all or any of the issues in dispute; and

(e) Resolve such other matters as may simplify and shorten the hearing.

#### FORMAL HEARINGS

SOURCE: 70 FR 11818, Mar. 9, 2005, unless otherwise noted.

#### § 4.230 Authority and duties of the administrative law judge or Indian probate judge.

(a) The authority of the administrative law judge or Indian probate judge in all formal hearings in probate pro-

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ceedings includes, but is not limited to authority:

(1) To administer oaths and affirmations;

(2) To issue subpoenas under the provisions of 25 U.S.C. 374 upon his or her own initiative or within his or her discretion upon the request of any interested party, to any person whose testimony he or she believes to be material to a hearing;

(3) To permit any interested party to cross-examine any witness;

(4) To appoint a guardian ad litem to represent any minor or incompetent interested party at hearings;

(5) To rule upon offers of proof and receive evidence;

(6) To take and cause depositions to be taken and to determine their scope; and

(7) To otherwise regulate the course of the hearing and the conduct of witnesses, interested parties, and attorneys at law appearing therein.

(b) Upon the failure or refusal of any person upon whom a subpoena has been served to appear at a hearing or to testify, the administrative law judge or Indian probate judge may file a petition in the appropriate U.S. District Court for the issuance of an order requiring the appearance and testimony of the witness.

#### § 4.231 Formal hearings.

(a) All testimony in formal Indian probate hearings must be under oath and must be taken in public, except in circumstances that, in the opinion of the administrative law judge or Indian probate judge, justify all but interested parties to be excluded from the hearing.

(b) The proceedings of hearings must be recorded verbatim.

(c) The record must include a showing of the names of all interested parties and attorneys who attended such hearing.

#### § 4.232 Evidence; form and admissibility.

(a) Interested parties may offer at a formal hearing such relevant evidence as they deem appropriate under the generally accepted rules of evidence of the State in which the evidence is taken, subject to the administrative